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UNITED STATES
BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT

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SUMMARY REGARDING PROPOSED AMENDMENTS
TO FIRST CIRCUIT BAP LOCAL RULES

I. Introduction

The BAP has drafted proposed amendments to the First Circuit BAP Local Rules to address the upcoming amendments to Part VIII of the Federal Rules of Bankruptcy Procedure.

As the redline comparing the proposed amended local rules with the present local rules is cumbersome, the Office of the Clerk has prepared this summary to assist the reader in considering the proposed amendments. For reference, the local rules which have been moderately or significantly amended have italicized titles below. The remainder have had either minor or no changes, have no corresponding local rule, or are local rules which are no longer necessary. Notes are offered for those rules that present a notable change in practice.

II. General Summary

The Advisory Committee on Bankruptcy Rules undertook a comprehensive revision of the rules governing bankruptcy appeals, Part VIII of the Federal Rules of Bankruptcy Procedure, in order to align them with the Federal Rules of Appellate Procedure and update them to include electronic transmission, filing, and service. The amended Part VIII rules will take effect on December 1, 2014.

In addition to reorganizing and renumbering the rules, the amended Part VIII rules offer the guidance that the BAP previously provided via local rules. As such, much of the drafting involved deleting provisions that were no longer necessary and renumbering and reorganizing the remaining rules. The proposed amended local rules have some new rules to address those that are new in the Part VIII rules.

III. Detailed Summary of Amended Part VIII of the Federal Rules of Bankruptcy Procedure and Proposed Amended First Circuit BAP Local Rules

1. *Amended Fed. R. Bankr. P. 8001.* This rule addresses the scope of the Part VIII rules, the definition of BAPs and the method of document transmission. Present Fed. R. Bankr. P. 8001

provides for the manner of taking an appeal and present 1st Cir. BAP L.R. 8001-1 through 8001-4 provide for the title and the effective date of the local rules, the notice of appeal, dismissal, and the forum selection. Proposed amended 1st Cir. BAP L.R. 8001-1 retains the provisions for the title and effective date and, consistent with the amended Fed. R. Bankr. P. 8001, it adds a reference to the method of transmitting documents, including the insertion of our present rule for facsimile filing. The remainder of present 1st Cir. BAP L.R. 8001-1 through 8001-4 are included as described below.

2. Amended Fed. R. Bankr. P. 8002. This rule addresses the time for filing a notice of appeal. No local rule is necessary.

NOTE: The rule now provides for inmate filings.

3. Amended Fed. R. Bankr. P. 8003. This rule addresses appeals as of right. Proposed 1st Cir. BAP L.R. 8003-1 is largely the same as present 1st Cir. BAP L.R. 8001-2. In the proposed rule, subpart (a) provides that the notice of appeal contain the names and contact information of the parties. This information is included in present Fed. R. Bankr. P. 8001(a) and is incorporated in the new Official Form 17A. By this proposed rule, the need for this information is made explicit. In subsection (b), reference to amended Fed. R. Bankr. P. 8002(b)(3) is made to highlight that parties seeking to appeal an order regarding reconsideration need not file a separate notice of appeal. Subsection (c), sets forth the consequences for failure to pay the fee by the various applicable deadlines.

NOTE: **Amended Fed. R. Bankr. P. 8003(d) is a significant change in practice.** Under present Fed. R. Bankr. P. 8007(b), an appeal is entered on the docket after the bankruptcy clerk transmits the completed record, typically approximately 30 days after the appellant files the notice of appeal. Under amended Fed. R. Bankr. P. 8003(d)(1), the bankruptcy clerk “must promptly transmit the notice of appeal . . .” and under (d)(2), the intermediate appellate courts must docket the appeal upon receiving the notice.

4. Present 1st Cir. BAP L.R. 8001-3. This rule is no longer necessary as the amended Part VIII rule for dismissal appears at the end of the Part VIII rules. See Amended Fed. R. Bankr. P. 8023. Given the clarity of the amended rule and the immediate transfer of jurisdiction, a local rule is no longer necessary.

5. Amended Fed. R. Bankr. P. 8004. This rule addresses appeals by leave which are presently addressed in 1st Cir. BAP L.R. 8003-1. This rule or an amended local rule are no longer necessary given the comprehensive federal rule.

6. *Amended Fed. R. Bankr. P. 8005.* This rule addresses elections. Elections are presently addressed in Fed. R. Bankr. P. 8001 and that rule requires that an election may be made only by a separate writing. **Instead of requiring a separate writing, the new provision requires that the election conform substantially to the appropriate Official Form. New Official Form 17A provides for an election within the notice of appeal.** There is also now an official form for an appellee election and, if an appellee elects to proceed in the district court, it is the BAP that will transfer the case to the district court rather than the bankruptcy court. In the proposed

amended local rule, the prior references to the separate writing requirement and to procedures for transferring a case upon election are deleted. Provisions regarding challenges to elections and motions for leave to appeal are deleted as those matters are addressed in the federal rule. The only notable additions to the proposed amended local rule are references to the new official forms and stylistic changes to the waiver sentences.

NOTE: This represents a **significant change in practice**. An appellant is no longer required to provide a separate writing when electing to proceed in the district court.

7. *Amended Fed. R. Bankr. P. 8006*. This rule addresses direct appeals. No local rule is necessary.

NOTE: This rule provides an exception to the effect of the prompt docketing of the appeal. For purposes of this rule only, a matter is “pending” in the bankruptcy court for 30 days after the effective date of the appeal in order to provide the bankruptcy judge with an opportunity to decide the issue of certification.

8. *Amended Fed. R. Bankr. P. 8007*. This rule addresses motions for stay pending appeal. Present 1st Cir. BAP L.R. 8005-1 lists the documents the parties have to include when filing such a motion. The federal rule now includes these requirements. With respect to timing, it provides that the movant can file the motion at the bankruptcy court either before or after the notice of appeal is filed. Under the present rule, the movant has to present the motion “promptly.” See Fed. R. Bankr. P. 8011(c). That requirement was deleted but not substituted with a new provision in the amended federal rules. As such, the existing deadline was inserted in the proposed amended local rule. Also in the proposed amended local rule, 1st Cir BAP L.R. 8007-1(a), the rule regarding emergency motions was cross-referenced.

9. *Amended Fed. R. Bankr. P. 8008*. This rule addresses indicative rulings. It provides a mechanism to allow the bankruptcy court to rule on a request for relief despite concerns that the court lacks jurisdiction due to the filing of the appeal. The mechanisms described, however, are via notice and not motion. As such, in proposed 1st Cir. BAP L.R. 8008-1(a), a mechanism is proposed to provide guidance on how parties can provide notice to the BAP, and in subsection (b) clarification on how to proceed with the BAP after the bankruptcy court has ruled on the underlying motion.

NOTE: This rule provides a new procedure when there is a question about whether a bankruptcy judge retains jurisdiction to consider a request for relief from a matter now on appeal.

10. *Amended Fed. R. Bankr. P. 8009*. This rule addresses the record on appeal and sealed documents. The rule also provides the mechanism for ordering the transcript and the procedure when no transcript is available. Although that part of the rule providing for corrections of the record and for the ability of the courts to supplement the record could suggest courts will cure errors, proposed 1st Cir. BAP L.R. 8009-1(a) clarifies that the BAP need not remedy any failure to designate an adequate record.

NOTE: This rule provides that if a transcript is “unavailable,” the appellant must prepare a statement regarding the proceedings. The bankruptcy court must approve of the statement (the appellee may object or offer amendments). The parties can also provide an agreed statement as to the record on appeal which statement is also subject to bankruptcy court approval. Lastly, the rule provides that if there are omissions in the record, inter alia, the BAP can supplement the record.

11. Amended Fed. R. Bankr. P. 8010. This rule addresses completing and transmitting the record. The provisions set forth in present 1st Cir. BAP L.R. 8007-1 are no longer necessary given amended Fed. R. Bankr. P. 8009 and 8010 and the prompt docketing of the appeal. Proposed 1st Cir. BAP L.R. 8010-1(a) is designed to provide guidance to the bankruptcy court when the record is incomplete

NOTE: This rule has new affirmative requirements for reporters.

12. *Amended Fed. R. Bankr. P. 8011.* This rule addresses those matters that are presently set forth in 1st Cir. BAP L.R. 8008-1. It also addresses the method of filing briefs and appendices, matters that are addressed in 1st Cir. BAP L.R. 8009-1 and 8009-2. The proposed rule, effectively combines the former rules such that the rule is the same with the exception that certain superfluous service provision and those references to the appendix which are now explicitly addressed in the Part VIII rules have been deleted. Also added is a provision about privacy protection, similar to what is set forth in General Order No. 2, as well as a provision regarding hyperlinks; a provision which comes in large part from the First Circuit Local Rules.

13. *Amended Fed. R. Bankr. P. 8012.* Corporate Disclosure Statement. This provision is new. Because the information requested is the same as that required in the form for Statement Regarding Interested Parties, see 1st Cir. BAP Official Form 4, proposed 1st Cir. BAP L.R. 8012-1(a) provides that filing proposed Official Form 2 will satisfy this new provision.

14. Amended Fed. R. Bankr. P. 8013. This rule addresses motions and intervention. Motions are addressed in present 1st Cir. BAP L.R. 8011-1 and proposed 1st Cir. BAP L.R. 8013-1 is largely the same, albeit renumbered. In the proposed rule, the first section is removed (written motion required) as it is now explicit under the federal rule. Two matters were added to the list of motions the clerk is authorized to act upon: motions related to the filing of the record and transcript and motions related to the election because issues related to those matters have narrowed under the federal rules. The language regarding reconsideration is derived from First Circuit Local Rule 27(d). The proposed local rule includes provisions for emergency motions which are presently addressed in 1st Cir. BAP L.R. 8011-2.

15. Amended Fed. R. Bankr. P. 8014. This rule addresses briefs. This matter is presently addressed in 1st Cir. BAP L.R. 8010-1. Proposed 1st Cir. BAP L.R. 8014-1 simply deletes from the present rule those matters now addressed in the federal rule.

16. *Amended Fed. R. Bankr. P. 8015.* This rule addresses form and length of briefs and appendices. These matters are presently addressed in 1st Cir. BAP L.R. 8009-1 and 8010-1. In proposed 1st Cir. BAP L.R. 8015-1, most of these former rules are deleted as the requirements

would be duplicative of the federal rule. Given the last sentence of the rule (“By local rule, a district court or BAP may accept documents that do not meet all the requirements of this rule.”), added is a rule that explains the Panel will exercise its discretion in determining whether to accept documents that do not meet all the requirements of Fed. R. Bankr. P. 8015.

17. Amended Fed. R. Bankr. P. 8016. This rule addresses cross-appeals. No local rule is necessary.

18. Amended Fed. R. Bankr. P. 8017. This rule addresses amicus curiae briefs. No local rule is necessary.

19. Amended Fed. R. Bankr. P. 8018. This rule addresses the deadlines for serving and filing briefs and appendices. The federal rule provides that the BAP can dispense with the appendix and permit an appeal to proceed on the original record with the submission of any parts of the record that the Panel orders filed. It provides for consequences for failure to file, a matter that is addressed in present 1st Cir. BAP L.R. 8009-1(c). The requirements for the appendix address most of the requirements set forth in present 1st Cir. BAP L.R. 8009-2. Additional items are listed in proposed 1st Cir. BAP L.R. 8018-1.

NOTE: The filing deadlines for briefs was 14 days; it is now 30 days for appellants and appellees. It remains 14 days for reply briefs.

20. *Amended Fed. R. Bankr. P. 8019.* This rule addresses oral argument. After slightly modifying present 1st Cir. BAP L.R. 8012-1, the proposed local rule remains the same. In proposed 1st Cir. BAP L.R. 8019-1, deleted is the provision suggesting the Panel could announce at the time of decision it was dispensing with oral argument. The longstanding practice is that the Panel will enter an order to that effect prior to issuing the decision. Added is a provision about motions to continue using language from the First Circuit Local Rules.

21. *Amended Fed. R. Bankr. P. 8020.* This rule addresses frivolous appeals and other misconduct. Proposed 1st Cir. BAP L.R. 8020-1 retains the provisions of present 1st Cir. BAP L.R. 8070-1. It now further provides, consistent with the First Circuit Local Rules, for sanctions due to vexatious litigation.

22. Amended Fed. R. Bankr. P. 8021. This rule addresses costs. No local rule is necessary.

23. *Amended Fed. R. Bankr. P. 8022.* This rule addresses motions for rehearing. To avoid any difficulty with Fed. R. Civ. P. 8022(a)(3), 1st Cir. BAP L.R. 8022-1 permits responses to be filed.

24. Amended Fed. R. Bankr. P. 8023. This rule addresses voluntary dismissals. No local rule is necessary.

25. Amended Fed. R. Bankr. P. 8024. This rule addresses clerk’s duties on disposition of the appeal. Proposed 1st Cir. BAP L.R. 8024-1, provides, with slight stylistic change, the clerk’s office information which is set forth in present 1st Cir. BAP L.R. 8016-1.

26. Amended Fed. R. Bankr. P. 8025. This rule addresses stay of the judgment. No local rule is necessary.

27. *Amended Fed. R. Bankr. P. 8026.* This rule addresses local rules. Subsection (b) of proposed 1st Cir. BAP L.R. 8026-1, without change, was formerly 1st Cir. BAP L.R. 8018. Subsection (a) clarifies that the federal rules apply to proceedings and subsection (c) explains what definitions are applicable.

28. Amended Fed. R. Bankr. P. 8027. This rules addresses notice of a mediation procedure. No local rule is necessary.

29. The following present three rules have not been amended:

1st Cir. BAP L.R. 9009-1 Official Forms

1st Cir. BAP L.R. 9010-1 Entry of Appearance and Admission to Practice

1st Cir. BAP L.R. 9010-2 Pro Se Parties

30. Official Forms. 1st Cir. BAP Official Forms 1 and 2 have been deleted as they are no longer necessary given the new Official Forms. The remaining two forms are retained and renumbered as Official Forms 1 and 2.